

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
_____	)	

**COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),<sup>1</sup> through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB)<sup>2</sup> and pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>3</sup> hereby submits its comments on the Recommended Decision.

The Federal-State Joint Board on Universal Service (Joint Board) released its Recommended Decision on October 16, 2002, addressing issues from the *Ninth Report and Order* that were remanded by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) regarding the establishment of a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs.<sup>4</sup> Specifically, the Joint Board was asked to address three of the four issues remanded by the Tenth Circuit: (1) the Commission's failure to adequately define the key statutory terms of "reasonably comparable" and "sufficient;" (2) the Commission's failure to adequately explain setting the funding

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<sup>1</sup> USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>2</sup> *Public Notice*, DA 02-2976 (rel. Nov. 5, 2002) soliciting comment on *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Recommended Decision (rel. Oct. 16, 2002) (Recommended Decision).

<sup>3</sup> 47 C.F.R. §§1.415 and 1.419.

<sup>4</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001).

benchmark at 135% of the national average; and (3) the Commission's failure to provide inducements for state universal service mechanisms. The Commission referred the record collected on its Remand Notice<sup>5</sup> to the Joint Board for its recommendation regarding these remanded issues and the Joint Board has made five specific recommendations: "(1) continuing use of a national average cost benchmark based on 135% of the national average cost; (2) funding 76% of state average costs exceeding the national benchmark; (3) establishing a national rate benchmark based on a percentage of the national average urban rate; (4) implementing state review and certification of rate comparability; and (5) providing states the opportunity to demonstrate that further federal action is needed because current federal support and state actions together are insufficient to yield reasonably comparable rates."<sup>6</sup> The Commission now seeks comment on those Joint Board recommendations.

The *Public Notice* seeks comment on the Joint Board's Recommended Decision, which only applies to the non-rural high-cost universal service support mechanism, not the rural mechanism. While USTA has no substantive comments at this time on the recommendations made by the Joint Board with regard to high-cost universal service support for non-rural carriers, USTA believes it is important to address here the possibility of any prospective implications that may be drawn from any Commission determinations in this proceeding for high-cost support for rural carriers. In sum, USTA maintains that any determinations the Commission makes in this proceeding with regard to non-rural carriers should not apply to rural carriers. USTA notes that the Joint Board has made clear that its recommendations "apply to the non-rural high-cost universal service support mechanism and do not address the rural mechanism."<sup>7</sup> More

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<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 2999 (2002) (Remand Notice).

<sup>6</sup> Recommended Decision, para. 10.

<sup>7</sup> See Recommended Decision, para. 9.

importantly, the Joint Board emphasized that its Recommended Decision “is *not intended* to apply to rural companies,” citing the fact that there are complex issues surrounding high-cost support for rural telephone companies.<sup>8</sup> Finally, the Joint Board notes that the “Commission did not refer to the Joint Board the issue of how the non-rural high-cost support mechanism will interact with other universal service support programs, including high-cost support for rural carriers.”<sup>9</sup> USTA agrees with the Joint Board’s conclusion that its recommendations in this Recommended Decision should not be applied to rural carriers.

In addition to the Joint Board’s statements in the Recommended Decision that its recommendations there are not intended to apply to rural companies, USTA emphasizes that rural carriers are currently receiving federal high-cost universal service support pursuant to the Rural Task Force Order,<sup>10</sup> which provides such support to rural carriers through a modified embedded cost mechanism through June 30, 2006. This support mechanism for rural carriers must remain in place through that date to ensure that rural carriers will have predictable levels of support so that they can continue to provide affordable and quality telecommunications services to rural America.

Another important reason for the Commission to refrain from applying any determinations it makes in this proceeding to rural carriers is that there continue to be significant cost differences between rural and non-rural carriers. When the Joint Board stated that its Recommended Decision does not apply to rural carriers, it explained that “certain assumptions in this Recommended Decision may not make sense for rural carriers. For example, . . . , while

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<sup>8</sup> See *id.* at para. 28 (emphasis added).

<sup>9</sup> See *id.* at n. 64, *citing* Remand Notice, 17 FCC Rcd at 3011, para. 26 n. 93.

<sup>10</sup> See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC

statewide averaging is appropriate in the non-rural mechanism, it may not be appropriate for the high-cost mechanism providing support to rural carriers.”<sup>11</sup> The Joint Board further explained why statewide averaging may not be appropriate for rural carriers, stating that “many rural carriers lack the economies of scale and scope of the generally larger non-rural carriers, as the Rural Task Force established in documenting differences that exist between rural and non-rural companies.”<sup>12</sup> The Commission, too, recognized these cost differences (*i.e.*, “higher operating and equipment costs, which are attributable to lower subscriber density, small exchanges, and a lack of economies of scale”) in the Rural Task Force Order.<sup>13</sup>

Finally, as noted previously, the Commission has not referred to the Joint Board for consideration or recommendation “how the non-rural high-cost support mechanism will interact with . . . high-cost support for rural carriers.”<sup>14</sup> Moreover, USTA emphasizes that the Commission has not referred to the Joint Board in this proceeding any substantive review of the high-cost universal service support mechanism for rural carriers. Any substantive review of the rural mechanism necessitates a separate proceeding to fully consider the complex issues surrounding high-cost support for rural carriers, not a transfer of determinations made in this proceeding to the rural mechanism.

In sum, USTA is not filing substantive comments at this time on the establishment of a federal high-cost universal service support mechanism for non-rural carriers, however, for the foregoing reasons USTA urges the Commission to refrain from applying any determinations it

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Docket No. 96-45, Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) (Rural Task Force Order).

<sup>11</sup> See Recommended Decision, para. 11.

<sup>12</sup> See *id.*, para. 28.

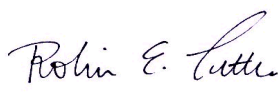
<sup>13</sup> See Rural Task Force Order, para. 5.

<sup>14</sup> See *infra* note 9.

makes in this proceeding to the federal high-cost universal service support mechanism for rural carriers.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Robin Tuttle, do certify that on December 20, 2002 copies of the foregoing Comments of the United States Telecom Association were either sent via electronic mail or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the below service list.

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/s/

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